IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4884 of 2004

Date of Decision: .5.2004

---

UNION OF INDIA (WESTERN RAILWAY)

VERSUS

ODHAVJI C THAKOR

(for full cause title, see next sheet)

---

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?
1. Special Civil Application No. 4884 of 2004

MR MUKESH A PATEL for Petitioners.
MR KK SHAH for Respondent No. 1.

---

CAV JUDGEMENT (Per : HON'BLE MR.JUSTICE H.K.RATHOD)

Heard learned Counsel Mr. Patel for the petitioners and Mr. K.K. Shah, learned Counsel for the respondent Odhavji C.Thakore.

Rule. Learned counsel Mr. K.K.Shah appearing for the respondent workman on caveat waives service of rule. In the facts of the case, the petition is taken up for final hearing today.

Whether reporters of Local Papers may be allowed to see the Judgment?

In this petition, the petitioner has challenged the order of Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in OA No. 727 of 1997 with M.A. No. 203 of 2003 dated 6th November, 2003 wherein the Tribunal directed the petitioners to treat the entire period as on duty and refix the pension of the present respondent in light of the observations made by it in the order and pay to the respondent arrears of salary etc. as well as retirement benefits including leave encashment, GPF, Group Insurance etc. due and payable as per rules. The tribunal directed to complete the said exercise within one month from the date of receipt of the order. The tribunal also allowed interest at the rate of 12 per cent p.a. from the due dates under different schemes with costs, quantified at Rs.2000.00 in favour of the respondent. With these directions, the tribunal disposed of the application. The respondent who is appearing on caveat has filed reply.

2. The facts, in brief, are to the effect that workman joined service in the year 1950; then, he was promoted as a Driver of the Mail Train in the year 1958. He was working as a Driver to the Mail Train till the date of his removal from service. He met with a serious accident while taking the Engine to Sabarmati Railway Yard and he was hospitalized. He remained on leave for about 75 days from October 10, 1980 to December 27, 1980 without prior permission from the higher authority. He was served with a show cause notice dated November 16, 1981. Thereafter, Enquiry Officer was appointed on December 28, 1981. Departmental Enquiry was completed. In enquiry, he pleaded guilty of remaining absent for 75 days without prior permission of the authority. Disciplinary proceedings were initiated on March 21, 1982. He explained in enquiry that he met with an accident and sustained serious injury on the stomach; he was not keeping good health; his wife and son were also sick; he had to look after them; he was confused and remained absent. He was removed from service on May 25, 1982 for remaining absent for 75 days. Copy of the inquiry officer's report was served upon the workman alongwith the order of removal. Departmental appeal filed by him against the order of removal was rejected. Mercy petition was also rejected. The workman therefore filed TA No. 452 of 1986 before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad ["CAT" for short]. The CAT, by order dated August 31,

1990, held that the enquiry is vitiated and order imposing penalty of removal from service must be quashed; this however, will not preclude the petitioners from supplying a copy of the enquiry report to the respondent and giving him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. The application was, thus, allowed by the tribunal to that extent with no order as to costs.

It was also observed by the tribunal that if the petitioners chose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate outcome; nothing said therein would affect the decision of the disciplinary authority in that regard. The tribunal also observed that the said order of the tribunal is not a direction to necessarily continue the disciplinary proceedings and that was entirely left to the discretion of the disciplinary authority.

The petitioners thereafter filed review application before the CAT being Review Application No. 460 of 1990 against the order in TA No. 452 of 1986, on October 11, 1990. During the pendency of the said review application, the respondent workman retired on December 31, 1990. Review application came to be rejected by the Tribunal on August 14, 1991. Thereafter, the said orders of the tribunal were not challenged by the petitioners before the higher forum. The petitioners did not initiate any further proceeding against the respondent workman as per the directions of the tribunal. The respondent was staying in a quarter. The respondent was not paid the retirement benefits by petitioners. No order of reinstatement was passed by the petitioners in favour of the respondent workman but the respondent workman was served with notice by the petitioners to evict the quarter occupied by the respondent workman. Therefore, the workman filed OA No. 130 of 1994 before the CAT praying to direct the petitioners to pay all the retirement benefits and till then, he may be permitted to occupy the quarter. The CAT granted interim stay against the eviction of the quarter. The CAT decided the OA NO. 130 of 1994 on August 4, 1994 directing the workman to make representation within 15 days. The CAT directed the petitioners to dispose of such representation within 12 weeks from the date of receipt of such representation. The workman undertook to vacate the railway quarter within two weeks after the receipt of retiral dues. With these directions, said OA was disposed of by the Tribunal. The petitioners passed order on December

13/20, 1995 and no decision to the representation dated August 20, 1995. The respondent vacated the quarter on September 26, 1994. The petitioners passed order regulating the service of the petitioners from May 25, 1982 to December 31, 1990, on April 23, 1994 in view of the representation made by the petitioner pursuant to the order passed by the Tribunal in OA NO. 130 of 1994.

The respondent challenged the order dated December 13/20, 1995 and inaction on the part of the petitioners on his subsequent representation dated August 20, 1996 by filing OA No. 727 of 1997 with MA No. 203 of 2003, decided by the Tribunal on November 6, 2003 which is the subject matter of challenge in this petition.

We have heard the learned Counsel Mr. Patel for the petitioners and Mr. KK Shah, learned Counsel for the respondent workman. Both the Counsel have placed on record their written arguments.

Learned counsel Mr. Patel contends that the tribunal has erred in directing the petitioners to treat the period spent on duty. It was his submission that since the order of punishment was set aside by the tribunal only on the ground of violation of the principles of natural justice, the tribunal ought not to have issued such directions. He also submitted that whether to initiate further enquiry or not was left at the discretion of the disciplinary authority by the tribunal. He also submitted that the action was not initiated in view of the pendency of the review application; the respondent retired from service on December 31, 1990 and thereafter, no action was initiated. He also submitted that the workman unauthorizedly occupied the quarter from December 31, 1990 to 1994. According to rules, the petitioner is entitled to recover market rent as per service rules. The petitioner passed orders under rule 1343, 1344 and 1345 of the Service Rules for deciding the issue about period and wages of intervening period. Said amount can be adjusted against the amount of market rent (damage rent) from the respondent. Therefore, the petitioner passed order regulating the interim period and granted 50 per cent wages for the intervening period. It was his submission that, otherwise, the respondent is not entitled to any amount on the principle of No work No Pay. It was also his submission that the respondent is not entitled to full wages for the intervening period. The quarter came to be vacated by the workman on September 26, 1994, therefore, the authorities of the

petitioners were entitled for the retention of the retirement benefits including the pension till the vacation of the quarter by the respondent under the statutory rules having force of Article 309 of the Constitution and the order passed by the petitioners was legal and valid and, therefore, tribunal ought not to have set aside such orders. He also submitted that under the Pension Rules, maximum service period is 33 years and yet the petitioners considered 37 years and calculated benefits on that basis. Therefore, inter alia, his submission is that the tribunal was in error in passing the order in question and error is apparent on the face of the record. Learned Counsel Mr. Patel has not cited any decision in support of his submissions. Except the aforesaid submissions, no other submissions have been made by Mr. Patel before this Court, either oral or in writing. In substance, his submission is to the effect that the action and decision of the petitioner both are legal and valid and, therefore, the tribunal ought not to have granted the reliefs in favour of the respondent workman.

On the other hand, learned Counsel Mr. K.K. Shah for the respondent has submitted that the tribunal was right in granting the relief in favour of the respondent; the order of removal was not in existence as it was quashed by the tribunal in earlier proceedings; the petitioners failed to initiate proceedings till the respondent retired from service on 31st December, 1990. No steps were taken by the petitioner; no retirement benefits were paid by the petitioners till 1994. He submitted that the respondent workman was entitled to occupy the quarter as he was not paid the retirement benefits by the petitioners; that the tribunal was right in relying upon the case of Violet Isaac versus Union of India and Union of India versus Madan Mohan Prasad [(2003) 1 ATJ 246]; that the tribunal was right in discussing the whole issue and considering various decisions of the apex court on the subject and has passed proper orders; has not committed any error, therefore, no interference is necessary; that looking to the alleged misconduct of remaining absent for 75 days because of the serious accident, extreme punishment of removal from service is illegal, unjust and improper; that the workman was admitted in the Railway Hospital after the accident while on duty; extreme and unjustified punishment of removal and the intervening period of unemployment from the date of penalty May 25, 1982 till the date of his retirement has ruined the whole life of the respondent. He high-lighted pitiable condition of the workman during the course of his oral submissions and submitted that the

unemployment of the respondent during the intervening period has compelled the son of the respondent to give up his studies from Std. 3 and has, thereby, affected the education of his children; in the year 2000, the respondent has become blind and has lost his vision due to failure in surgery; in 2004, lower part of the body become dead due to paralysis. He submitted that the Railway Medical Facilities are available but for want of sufficient funds and timely action, the respondent could not take proper treatment; the amount of retirement benefits received by the respondent has been spent on medical expenses. At present, the respondent is staying in a kacha chawl on rental basis and his son is selling corriander and vegetables in vegetable market at Maninagar for some one and is getting Rs.1200.00 to Rs.1500.00 per month. He also submitted that it was left at the sole discretion of the petitioners to hold or not to hold further proceedings from the stage indicated by the tribunal but the petitioners failed to continue the proceedings from the stage indicated by the tribunal and the respondent retired in the mean time, on December 31, 1990 after the order of removal was quashed by the Tribunal on August 31, 1990 and, therefore, the respondent workman is deemed to have continued in service as if he has never been removed from service and, therefore, tribunal was right in granting the relief in favour of the respondent. He submits that the petitioners were not precluded from proceeding further in the proceedings against the respondent from the stage indicated by the tribunal but they filed review application wherein stay was not granted and the order quashing the order of removal was operating against the petitioners. He submits that the respondent joined service in 1950 and had put in more than 32 years and was having unblemish past which was ignored while passing the order of removal; looking to the gravity of misconduct of remaining absent for 75 days, the extreme punishment of removal was harsh and unjustified considering his past unblemish service record of 32 years from 1950 and, therefore, considering the matter as a whole, the tribunal is perfectly right in granting the reliefs in favour of the respondent, therefore, there is no substance in the petition and the petition is required to be dismissed. Except these submissions, no other submissions were made by the learned advocate Mr. Shah before this Court either oral or in writing.

We have perused the order in question as well as the earlier orders made by the tribunal in the subject matter. We have also considered the oral and written submissions made by the learned counsel for the parties.

We have also considered the averments made by the petitioners in the memo of petition and the reply thereto filed by the respondent on caveat. Considering these aspects of the matter, we are of the view that most of the facts are not in dispute.

In light of such undisputed facts emerging from the record, the real question for our consideration is what would be the legal status of the respondent workman after the order dated 31st August, 1990 made by the Tribunal in TA No. 452 of 1986. The concluding portion of the order passed by the tribunal is reproduced as under:

"In the circumstances, we hold that the enquiry is vitiated and the order imposing the penalty of removal from service must be quashed. This however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and giving him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. The application is allowed to the extent indicated here but in the circumstances we make no order as to costs.

If the respondent chose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate outcome. Nothing said herein would affect the decision of the Disciplinary Authority in that regard. At the same time, we hasten to add, that this order of the Tribunal is not a direction to necessarily continue the Disciplinary Proceedings. That is entirely left to the discretion of the Disciplinary Authority.

[Emphasis Supplied]

Thus, from the aforesaid order of the tribunal, it is clear that it was entirely left to the discretion of the Disciplinary Authority to continue or not to continue the Disciplinary Proceedings against the respondent from the stage indicated by the tribunal. After the said order made by the Tribunal on August 31, 1990, the petitioners filed Review Application in October, 1990 wherein no stay was granted against the order dated August 31, 1990 and while the order dated August 31, 1990 was in operation and the application for review of that order was pending before the Tribunal, the respondent retired on December 31, 1990. From the date of the order August 31, 1990 till the date of retirement

of the respondent, no steps were taken and no efforts whatsoever were made by the petitioners to complete the proceedings from the stage indicated by the tribunal. It was also clarified by the tribunal that the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate outcome. In view of that, if the petitioners have not chosen to complete the proceedings, then, there would be no ultimate outcome thereof except the order dated August 31, 1990 wherein the enquiry was declared as vitiated and the order was quashed while reserving liberty in favour of the petitioners to complete the inquiry from the stage indicated by the tribunal. However, from the facts of the present case, it is clear that thereafter, the petitioners have not proceeded further against the respondent by supplying him a copy of the enquiry report and giving him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. Therefore, in view of that, on the date of retirement of the respondent, the order of his removal was not in existence, therefore, respondent is deemed to be in service for all purposes as if the order of removal was not passed against him. Liberty was given by the tribunal in favour of the petitioners to put their house in order and that was entirely left to the discretion of the Disciplinary Authority by the Tribunal. From the conduct of the petitioners, it is appearing that they chose not to continue the disciplinary proceedings against the respondents, otherwise, instead of filing an application for review, they would have immediately supplied a copy of the enquiry report to the respondent for enabling him to make his representation. Date of retirement of the respondent must be within the knowledge of the petitioners. There was a clear four months' period available with the petitioners to continue the disciplinary proceedings in the manner indicated by the Tribunal but the petitioners have failed to avail such liberty, therefore, the petitioners have to face the natural and normal consequences of the quashing of the order of removal. In review application, no stay was granted against the order dated August 31, 1990, therefore, the order dated August 31, 1990 was in operation. In these circumstances, action of the respondents in passing the order with regard to the intervening period on December 23, 1994 while exercising the powers in terms of rule 2044/ARII(FR 54A) Sub Rule 2(i), Rule 1344 (II) 1987 ED is without jurisdiction and contrary to rule 1344 (FR 54A) Sub Rule 3. Considering the language of Rule 1344 as referred to above, decision of the tribunal to quash the order of removal on the ground of non supply of the inquiry officer's report

before passing the order of removal and direction to supply the inquiry officer's report and to consider the representation of the respondent and then to pass the appropriate order, it is clear that the order of removal was quashed by the tribunal on merits because the non supply of the inquiry officer's report before passing the order of punishment has deprived the respondent from challenging the findings given by the inquiry officer and thereby, the respondent has been deprived from submitting his explanation about the proper punishment looking to the gravity of misconduct. There are two objects for supply of the inquiry officer's report to the delinquent after completion of the departmental inquiry and before passing the final order of punishment. One is to enable the workman to challenge the findings given by the inquiry officer in his report and the other is to enable the workman to submit explanation or defence about the proper punishment looking to the gravity of misconduct, past record, length of service and other relevant factors. These two opportunities were not given to the respondent herein and thereby the workman was deprived of his right to challenge the findings given by the inquiry officer in his report and to enable the workman to submit explanation or defence about the proper punishment looking to the gravity of misconduct, past record, length of service and other relevant factors. Therefore, order of removal was quashed by the tribunal on merits. Thus, the order of removal was quashed by the tribunal on the ground of non compliance with the requirement of clause (1) or (2) of Article 311 of the Constitution, therefore, the workman is entitled to be treated on duty for all purposes and he is entitled for full pay and allowances for the period to which he would have been entitled had he not been removed from service. This aspect has been recently examined by the apex court. In such circumstances, when the order of removal is set aside as violative of Article 311(2) of the Constitution, Fundamental Rule 54 would not apply. Same are the facts in this case. Apex Court examined this issue in Union of India versus Madhusudan Prasad [2004 SCC Lab & Service page 29]. Therefore, first, it is necessary for this court to consider the observations made by the Tribunal in its order dated August 31, 1990 in TA No. 452 of 1986, as under:

"In this case, the applicant implicitly admitted the fact of his unauthorized absence from duty with an intention that the Department would take a lenient view and impose a lesser punishment. But the Enquiry Officer after enquiring into the matter basing his admission of the guilt in the

charge, came to the conclusion that the applicant is guilty of the charge and submitted his report to that effect. The Disciplinary Authority basing on the report of the Enquiry Officer, imposed the major penalty of removal of the applicant from service. Before imposing the penalty, they ought to have supplied copy of the Enquiry Report to the applicant so that the applicant could have made his representation against the report. The denial of a copy of the enquiry report and an opportunity to make representation against it offends the principles of natural justice and violates the provisions of Article 311(2) of the Constitution as held by the Full Bench of the New Bombay of the Central Administrative Tribunal in Premnath K. Sharma Vs. Union of India (1988) 6 ATC 904."

Now, similar case was decided wherein also, show cause notice was not given by the disciplinary authority to the concerned employee. In this case also, after receiving the report from the inquiry officer, the Disciplinary Authority passed order of removal from service against the respondent straight away without supplying to the respondent a copy of the inquiry officer's report and also without issuing show cause notice to the respondent. Therefore, according to our opinion, Fundamental Rule 54A read with Rule 1344 would not apply to the facts of the present case. Relevant observations made in para 5 and 6 of the decision in Union of India v. Madhusudan Prasad 2004(1) SCC L & S page 29, are reproduced as under:

(5) It is true that when a reinstatement is ordered in appeal or review, the authorities can pass specific order regarding the pay and allowances to be paid to the government servant for the period of his absence from duty preceding the dismissal, removal or compulsory retirement, as the case may be. This is an enabling provision and the authorities can consider the relevant facts as to whether the employee should be denied the salary for the period he was kept under suspension preceding the removal, dismissal or compulsory retirement. The counsel for the appellant has placed reliance on the decision of the Constitution Bench of this Court in Managing Director, ECIL v. B. Karunakar

[(1993) 4 SCC 727] where this Court held that the question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceeding and depending on the final outcome. If the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any, and the extend of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the report and no more, where such fresh inquiry is held.

6. The above case was concerning an employee, who was found guilty in an enquiry but the report was not furnished to the employee and the show-cause notice was not served on him. In view of the facts and circumstances of the case, the Court directed that appropriate order should be passed regarding the back wages. In the instant case, the Appellate Authority directed reinstatement of the respondent and held that he was not entitled to get back wages for the period he was out of service. It may be noticed that the respondent was removed from service without any enquiry and he was not even given a show-cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of back wages. We do not think this is a fit case where Fundamental Rule

> 54 could have been invoked by the authorities. We find no merit in the appeal. The appeal is accordingly dismissed. "

We are also of the opinion that such an order of the Tribunal quashing the order of removal is not an order passed only on the ground of non observance of the requirement of Article 311(2) but it is an order passed on merits by the tribunal because the non supply of the inquiry officer's report to the respondent has deprived the respondent of his right to challenge the findings given by the inquiry officer in his report and to enable the workman to submit explanation or defence about the proper punishment looking to the gravity of misconduct, past record, length of service and other relevant factors and in view of that, it cannot be said to have been quashed on mere technical ground but it can be said that the order was passed by the tribunal on merits. In view of that, rule 1344 would not apply. Second reason is that though opportunity was given by the tribunal to continue and complete the disciplinary proceedings from that stage, same was not availed by the petitioners and therefore also, the petitioners are not entitled to take resort of rule 1344 (FR 54A) in such facts of the present case. The third reason is that looking to the directions issued by the tribunal, it is clear that the petitioners were at liberty to pass appropriate orders after supplying copy of the inquiry officer's report to the respondent and after enabling him to submit his representation against such report and, thus, they were not precluded from doing so but it was also clarified by the tribunal that the manner as to how the period spent in the proceedings should be treated would depend upon ultimate outcome of such proceedings. In view of that, since the petitioners have not proceeded further after the order of the tribunal dated August 31, 1990, there is no outcome of such proceedings and, therefore, also, the petitioners are not entitled to pass any order of denying backwages and other benefits of the total period from the date of removal till the date of his retirement. In such circumstances, the petitioners are having no jurisdiction to pass any order contrary to the legal rights flowing from the order of the tribunal in favour of the respondents. Fourth reason is once the order of removal is quashed, it was the duty of the petitioners to pass an order of reinstatement immediately from the date of removal till the date of the order made by the tribunal but no such order was passed by the petitioners. Therefore, considering the entire matter from all angles, according to our opinion, the petitioners are not

entitled to pass any order under Rule 1344 (FR 54A) for denying back wages and other benefits to the respondent for the intervening period. The contingency suggested by the Tribunal in its order has not at all arrived and, therefore, the petitioners were not entitled to pass any order contrary to the directions issued by the Tribunal. It is also relevant that the order of the tribunal in TA No. 452 of 1986 dated August 31, 1990 as well as the order of the tribunal in review application were not challenged by the petitioners before the higher forum and thus, both the orders have become final, therefore, order of removal was quashed by the tribunal and petitioners had not completed or continued proceedings, therefore, petitioners are not entitled to pass any adverse orders and are having no jurisdiction to pass such orders dated December 23, 1994 under Rule 2044 and 1344 as referred to above. Review application was rejected by the Tribunal on August 14, 1991, thereafter, the petitioners have not passed any order reinstating the respondent and for payment of the amount of retirement benefits and back wages for the intervening period. Since the order of the Tribunal in TA NO. 452 of 1986 dated August 31, 1990 as well as the order dated August 14, 1991 in Review Application were not challenged by the petitioners before the higher forum and further since the petitioners failed to continue the disciplinary proceedings from the stage indicated by the tribunal in its order dated August 31, 1990, the petitioners ought to have reinstated the respondent with all consequential benefits including back wages. Instead of that, the petitioners passed order of paper reinstatement on October 4, 1994; for the intervening period, passed order on December 23, 1994; paid an amount of Rs.23,978.00 towards PF to the respondent on May 15, 1995; on September 26, 1995, computation of pension was paid to the respondent and before that, on July 6, 1995, monthly pension was paid. On March 5, 1995, amount of GIS was paid to the respondent, meaning thereby, from the date of retirement December 31, 1990, at least more than four years had gone but the petitioners remained silent and tight over the matter and no payments were made in favour of the respondent who was removed from service in the year 1982. Instead of making such payments in favour of the respondent, the petitioners initiated eviction proceedings against the respondent compelling the respondent to approach the Central Administrative Tribunal by filing OA No. 130 of 1994. Said OA No. 130 of 1994 was disposed of by the Tribunal on August 4, 1994 and on September 26, 1994, quarter was vacated by the respondent. Looking to the above facts, it is clear that the respondent remained without any amount including the

salary, retirement benefits and other service benefits from 1982 to 1994, for a period of 12 years or so putting the respondent in pitiable condition. The wage or money is the real content of Article 21. If we were to take out the wage content from this Article 21, it would be reduced to a dead letter not worth even for decoration. Right to livelihood and right to social justice are the fundamental rights guaranteed under Article 21. Health and strength of a worker is an integral facet of right to life, even thogh, the State has acted in an arbitrary and harsh manner against the respondent to the extent that from the date of his removal, May 25, 1982 till the date of his retirement December 31, 1990 and till May 15, 1995, no payments of any kind were made in favour of the respondent. Then, during this period of about 12 years, how the respondent maintained himself and his family, what about the education of his children, health and other problems faced by the respondent due to unemployment and non payment of wages and retirement benefits? Employer can pay all the benefits to the employee after his action is quashed by the competent court. Can the employer compensate the employee for the irreparable injury caused to the employee, untold miseries suffered by the employee without any source of income during the intervening period? Therefore, this Court has to consider the struggle of a Mail Express Driver against the Mighty Giant Government during the period 12 years intervening period. In this back ground, the observations made by the Bombay High Court in Standard Chartered Grindlays Bank Ltd. v. G. Phopale [ 2003(96) IFLR Pg.145 Para 17] are relevant and, therefore, same are reproduced as under:

> "17. I need not stress the fact that wage is the real content of the Article 21. If we were to take out the wage content from this Article 21 it would be reduced to a dead letter not worth even for a decoration. In the absence of the source of livelihood which is protected by Article 21, the other fundamental rights would sound hollow and empty words and would collapse in no time as a dilapidated house. The workman and his family should not be made to stare merely on the pretext that proceedings under section 33 (2) (b) for approval of the action taken by employer is pending though he is told by law that the jural relationship continues and he still carries the label that he is an employee

of the applicant employer before the Tribunal...."

The apex court in C.E.S.E., Ltd. v. Subhash Chandra Bose [ 1992 (64) FLR 248 (SC)] observed as under:

"The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are 'mere cosmetic' rights. Socio-economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights, recognise their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection of their families as integral part of right to life. Our Constitution in the preamble and Part IV reinforce them compendiously as socio-economic justice, a bedrock to an egalitarian social order. The right to social and economic justice is thus a fundamental right."

Right to life includes everything which gives meaning to life and makes it wholesome and worth living. It means much more than survival or animal existence. Article 21 of the Constitution of India in its expanded horizon embrasses all concepts including any aspect of life which makes life meaningful. The petitioners withheld the amount of the respondent because of the unauthorized occupation of the quarter which was protected by the tribunal by way of interim order in OA NO. 130 of 1984. The petitioner wants adjustment of damage rent from the retirement benefits of the respondent workman. This aspect was examined by the apex court in Gorakhpur University v. Shital Prasad Nagendra AIR 2001 Sc 2433. The observations made by the apex court in Para 5 are reproduced as under:

"5. "We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996 (2) ESC 211 (All) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in (1994) 6 SCC 589 (supra) which, in turn, relied upon earlier decisions in State of Kerala v. M. Padmanabhan Nair (1985) 1 SCC 429 :(AIR 1985 SC 356 : 1985 Lab IC 664) and AIR 1981 SC 212 (supra). This Court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant-University on the decision reported in 2000 Suppl (1) JT (SC) 515 (supra) does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the

person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolution of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extend justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the

respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of this High Court."

The Tribunal has considered two decisions of the apex court, one in case of Violet Isaac Versus Union of India and the other in Union of India v. Madan Mohan Prasad. The damage rent do not fall under the terms 'admitted or obvious dues'. In Violet Isaac versus Union of India, the apex court observed that an employee is entitled to retain the quarter till the date of payment of terminal benefits. This decision was taken into account by the Tribunal while passing the orders in OA NO. 130 of 1994. In Gorakhpur University v. Shital Prasad Nagendra [ AIR 2001 SC 2433], the apex court held that the pension and other retirement benefits cannot be adjusted or appropriated for satisfaction of any other dues outstanding against retired employee, therefore, in view of the aforesaid decision, contention of the petitioner to adjust damage rent against the retirement benefits is illegal and contrary to law and the same cannot be accepted and accordingly same is rejected. The respondent was entitled to occupy the quarter till he receives retirement benefits from the petitioner, therefore, question of recovery of damage rent or penal rent does not arise at all. The Tribunal has, in the impugned order, considered the contentions raised by the petitioner. The Tribunal considered and discussed the contention of applicability of rule 1344 (FR 54A) while considering various decisions of the apex court on the subject matter. Relevant paragraphs 13, 19, 21, 22, 23, 25 and 32 from the order of the Tribunal are reproduced as under:

"13. Rule 1341 to 1345 of the Indian Railway Establishment Code Under the heading dismissal, removal and suspension under Chapter 13 contains provision relating to date from which removal/dismissal is affected, payment during suspension or deemed suspension reinstatement of a Government servant who has been dismissed, removed or compulsory retired on appeal or

review, reinstatement of a Government servant when orders have been set aside by a Court of law and is reinstated without holding further enquiry and reinstatement of the Government servant on suspension and the payment of salary during and the treatment of said period.

Sub clause 2 and 3 of Rule 1344 is as follows:

"(2)(I) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (I) or clause (@) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of rule 1343 (FR 54), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

Provided that any payment under this sub-rule to a railway servant (other than a railway servant who is governed by the provisions of Payment of Wages Act 1936) shall be restricted to a period of 3 years immediately preceding the date on which the judgment of the court was passed, or the date of retirement on superannuation of such railway servant as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 1343.

(3) If the dismissal, removal or compulsory retirement of a railway servant is set aside by court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding, such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be."

"19. "A two Judge Bench of the Apex Court in H.L.Mehra vs. Union of India, AIR 1974 SC 1281 was considering the scope of Rule 10(3) & 10(4) of CCS (CCA) Rules and has held as follows:

"7. Let us first examine the question on principle. When an order of suspension is made against a Government servant pending an enquiry into his conduct, the relationship of master and servant does not come to an end. What the Government, as master, does in such a case is merely to suspend the Government servant from performing the duties of his office. The Government issues a directing forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service or the statute or rules governing his conditions of force the relationship of master and servant. In other words, to quote Hegde, J., from V.P.Gindroniya v. State of Madhya Pradesh, (1970) 3 SCR 448 = (AIR) 1970 SC 1494=1970 Lab IC

13320 " the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey". This being the true nature of an order of suspension, it follows that the Government servant would be entitled to his remuneration for the period of suspension unless there is some provision in the statute or rules governing his conditions of service which provides for withholding of such remuneration. Now, when an order of dismissal is passed, the vinculum juris between the Government and the servant is dissolved the relationship of master and servant between them is extinguished. Then the order of suspension must a fortiori come to an end. But what happens when the order of dismissal is subsequently set aside? Does that revive the order of suspension? We do not think so. Once the suspension has come to an end by an order of dismissal, which was effective when made, it cannot be revived by mere subsequent setting aside of the order of dismissal in the absence of a statutory provision or rule to that effect. That is precisely the reason why sub-rules (3) and (4) had to be introduced in Rule 10 providing for retrospective revival and continuance of the suspension in cases falling within those sub-rules. This position which emerges clearly on principle is supported also by authority. There is a decision of a Bench of six judges of this Court which endorses the same view. That is the decision in Om Prakash Gupta v. State of Uttar Pradesh, (1955) 2 SCR 391 = (AIR 1955 SC 600)."

21. We also note that a Constitution Bench of the Apex Court in Khem Chand Vs. Union of India, AIR 1963 SC 687 was considering the vires of rule 12(4) of the 1957 CCS (CCA) Rule, which is identical to the present Rule 10(4). The Apex Court held as follows:

> "There is no difference worth the name between the effect of R.12(4) on a government servant, the penalty of dismissal removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is decided upon and the effect of R.12(4) on another government servant, a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases, the government servant will be deemed to be under suspension from the date of the original order of dismissal, except that where in a departmental enquiry a government servant was to placed under suspension prior to the date when the penalty was imposed, this result will not follows as R.12(3) would not then have any operation. It is entirely unlikely however that ordinarily a government servant will not be placed under suspension prior to the date of his dismissal."

22. We also note that a Constitution Bench of the Apex Court in Managing Director, ECIL vs. B. Karunakar, (1993) 4 SCC 727 has also considered the procedure to be adopted where the penalty order has been quashed for non service of the report of enquiry officer. It held:

> "31. Where after following the above procedure, the Court/Tribunal sets aside the

> order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitle to the back-wages and other benefits from the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decided according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held/that will also be the correct position in law."

23. We also note a Constitution Bench of the Apex Court in Devendra Pratap Narain Rai Sharma vs. State of Uttar Pradesh, AIR 1962 SC 1884 was interpreting rule 54 of the Fundamental rules of UP Government when the authority competent to reinstate the Government servant, who had been dismissed removed or was suspended has reinstated him. The rule provided for full payment in case of complete

exoneration and proportionate payment in other cases. The Apex Court distinguished the situation where the orders were quashed by Civil Court and held as follows"

"Rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh under Art.309 undoubtedly enables the State Government to fix the pay of a public servant where dismissal is set aside in a departmental appeal. But the rule has no application to cases in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work."

25. We first note that the Constitution Bench in Karunakar's case (supra, para 22) has clearly laid down the steps to be followed when the disciplinary enquiry is quashed on the ground of non-furnishing of enquiry officers report. We find that a review application was filed and the said review was dismissed. Thereafter no further disciplinary action has been taken by the respondents and the applicant has been reinstated in service vide orders dated 4.10.1994. It is therefore, clear that the respondents did not want to proceed against him and to examine the case on merit. The scope of rule 10(3) & 10(4) of CCS (CCA) Rules which is pari materia of Rule 5(3) & 5(4) of the Railway Servants (D&A) Rules has been explained in H.L.Mehta's case. The fact that the applicant who has to proceeded against leads to the conclusion that he cannot e deemed to have been placed under suspension from date of his removal. The natural consequences of the above is therefore that he has to be treated as duty for the entire period and is entitled to the wages. The decision

of Apex Court in R.P.Kapur (supra, para 16) and B.R.Patel (supra, para 17) refers. The 1965 Railway Board circular quoted in para 12 above is also to this effect. It is also seen that though the orders were quashed on 21/8/90 full payment of salary has not been made for the period 1/9/90 to 31/12/90, the date of his superannuation.

We also note that the first orders has been passed in exercise of the powers conferred under para 1343 sub clause 2. This rule further provides that the Railway Servant shall be given an opportunity of making a representation against the quantum proposed and that the same shall be taken into account before passing the order. It further provides that only in case of Railway servant is not covered by payment of wages act 1936, the payment shall be restricted to three years. There is no discussion in the impugned order as to whether such a notice was served or whether the applicant is covered by payment of wages act. This order is therefore bad also on account of violation of principles of natural justice. It is clear from the above discussions that the entire period will have to be treated as on duty, services rendered during this period will count for increment and that he will be entitled for full salary.

32. The case of Respondents Railway Administration is that the payment of terminal benefits was held up on account of non-vacation of the quarters and whatever payment is due is less than the recovery for unauthorised occupation of the quarter. The learned lawyer on behalf of the applicant has relied on the decision of the Apex Court in the case of Violet Isaac vs. Union of India and Union of India vs. Madan Mohan Prasad has held that penal rent/damage rent do not fall under the terms admitted or obvious dues. The amount towards normal rent and electricity and water charges which are admitted can be deducted. As

per the decision of Apex Court in Violet Isaac case he is entitled to retain the quarter till the date of payment of terminal benefits. The orders passed by the Tribunal in this regard in OA No.130/94 are also to this effect. "

In view of the above observations made by the tribunal considering various decisions on the subject matter, a moment order of removal is quashed by the tribunal, and though opportunity was given to the petitioners to complete disciplinary proceedings against the respondents but that opportunity was not availed and no steps were taken by the petitioner, then, respondent is entitled to natural and normal relief of reinstatement with back wages as if he was not removed from service. The petitioner was not entitled to pass the order about interim period because the tribunal passed conditional order or provided contingency that in case if the department chose to continue the disciplinary proceedings and complete then only, the petitioner has right to pass the order as directed by the tribunal and not otherwise, therefore, since the petitioner had not proceeded further to continue and complete the enquiry from the stage indicated by the tribunal, the petitioner was not entitled to pass any orders about the interim period and, therefore, rule 1344 (FR 54A) is also not applicable to the facts of the case and in light of the observations made by the apex court in Union of India versus Madhusudan Prasad (supra), the petitioner is not entitled to pass any contrary orders denying back wages and benefits to the respondent. Once order of removal is quashed, respondent is deemed to be in service for all purpose as if he has not been removed from service. Looking to the gravity of misconduct, 32 years unblemish past service of the respondent, we are of the view that the petitioners were not justified in imposing harsh punishment of removal from service for mere 75 days absence without prior permission of the higher authority. It is more so when it was within the knowledge of the petitioners that the respondent had met with an accident prior to his absence and he was hospitalized, he was on leave but merely that leave was extended without prior permission and wife and son of the respondent were also sick and he was confused, that is how, in such compelling circumstances, he committed misconduct. In such circumstances, the petitioners were not justified in considering it as a serious misconduct warranting extreme punishment of removal from service. This aspect was considered by the apex court in State of Rajasthan and others versus Sujara Malhotra [2003 SCC L/S pg. 1240];

Union of India versus Giriraj Sharma, [AIR 1994 SC 214 and in Syed Zaheer Hussain v. Union of India and others, [AIR 1999 SC 3367].

Thus, these are the legal position of law and yet the petitioners acted in harsh and arbitrary manner against the respondent who remained without wages and other retirement benefits for pretty long period of 12 years which ruined whole family life of the respondent during this period and because of that, son of the respondent was compelled to give up studies from Std.3, though primary education is compulsory in our country. Now, the respondent has become blind, has lost his vision, suffering from paralysis in half of the body, waiting for final outcome of the proceedings.

The question is when the order of removal is quashed because of the non compliance of the principles of natural justice and non observance of the provisions of Article 311(2) of the Constitution of India by the petitioners before passing the order of removal, the respondent was not permitted to work though he was ready and willing to work because of the illegal order of removal. The petitioners have not been able to point out any circumstances or exceptional circumstances for denying the back wages or any part thereof for the intervening period to the respondent. In such circumstances, normally, an employee is entitled for full back wages for the intervening period. This aspect was examined by the apex court in Hindustan Tin Works vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd., [AIR 1979 SC Pg. 75]. The observations made by the apex court in para 9 of that decision are reproduced as under:

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the

wrong as a result of which the workman is directed to be reinstated, the employer cold not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that they may not survive to see the day when relief is granted. More so in our system where the law's proverial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may will amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P.Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do

> the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were to terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. a Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal, (1971) 1 Lab LJ 508 and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow, (1971) 1 Lab LJ 327 have taken this view and we are of the opinion that the view taken therein is correct."

In view of our above observations and the final consideration to the real issue, the contentions raised by the petitioner were rightly answered by the Tribunal and we have also considered in detail the contentions raised by the petitioners before us in that regard and we are of the view that the tribunal was perfectly right in answering such contentions. After perusing the entire order passed by the tribunal, according to our opinion, the tribunal has not committed any error in passing the order in question. The tribunal was right in passing the order in question and was also right in granting the relief in favour of the respondent. The tribunal has not committed any procedural irregularity and/or jurisdictional error in passing such an order and, therefore, this Court cannot interfere with such just and proper order, considering the decision of the apex court in ROSHAN DEEN VS. PREETILAL [2002(1) SCC Pg.100]. Relevant observations in para-12 are quoted as under :-

> "12. We are greatly disturbed by the insensitivity reflected in the impugned judgment

rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it [ vide State of U.P. v. District Judge, Unnao ]. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

It is settled law that the High Court is having very limited jurisdiction in exercising powers under Article 226/227 of the Constitution of India. The High Court cannot act as an appellate authority while exercising the powers under Article 226/227 of the Constitution of India. This aspect has been recently examined by the apex court in Ranjeet Singh v. Ravi Prakash [2004 (3) SCC Pg. 682. The observations made by the apex court in para 4 of that decision are reproduced as under:

"4. "Feeling aggrieved by the judgment of the appellate court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned Single Judge of the High Court. The High Court has set aside the judgment of the appellate Court and restored that of the trial court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the appellate court. Though not specifically stated, the phraseology employed by the High Court in its judgment goes to show that the High Court

> has exercised its certiorari jurisdiction for correcting the judgment of the appellate court. In Surya Dev Rai v. Ram Chander Rai 1 (2003) 6 SCC 675 this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal. The High Court has itself recorded in its judgment that "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate court. On its own showing, the High Court has acted like an appellate court which was not permissible for it to do under Article 226 or Article 227 of the Constitution."

Therefore, considering the submissions made by the learned advocates for the parties and the facts of the present case in light of the aforesaid decisions, we find no substance in this petition. Therefore, this petition is dismissed. However, considering the peculiar facts and circumstances, we direct the petitioners to implement the order of the tribunal in OA NO. 727 of 1997 dated November 6, 2003 and pay whatever amounts due and payable to the respondent within one month from the date of receipt of copy of this order, with interest thereon at the rate of 12 per cent p.a. as directed by the Tribunal. If the petitioners would not make such payments within one month to the respondent, then, the petitioners will be required to pay such amount to the respondent with interest thereon at the rate of 18 per

cent p.a. from the due dates under different schemes. Rule is discharged with costs. Petitioners are directed top ay costs of Rs.3000.00 (Rs. three thousand only) to the respondent.

[ BHAWANI SINGH ]
CHIEF JUSTICE

[ H.K.RATHOD ]
JUDGE

Vyas/Smita